

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Ramh Corporation)	File Number: EB-00-DV-495
)	NAL/Acct. No. 200232800014
Licensee of Station KDEF(AM))	FRN 0006-1600-48
Albuquerque, New Mexico)	
Facility ID #227)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 28, 2002

By the District Director, Denver Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Ramh Corporation ("Ramh"), licensee of station KDEF in Albuquerque, New Mexico, apparently willfully violated Sections 73.1125, 73.1350 and 73.1400 of the Commission's Rules ("Rules") by failing to maintain a main studio presence, and failing to establish monitoring procedures to ensure compliance with authorized operating power, mode of operation and AM directional system parameters.¹ We further find that Ramh apparently willfully and repeatedly violated Section 73.1560 of the Rules,² by exceeding nighttime power levels and operating with an improper mode of operation. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),³ that Ramh is apparently liable for a forfeiture in the amount of twenty-one thousand dollars (\$21,000).

II. BACKGROUND

2. On December 5, 2000, the Federal Communications Commission's ("FCC") Denver Office received an anonymous complaint that KDEF was not switching power levels at night. Station KDEF is authorized to operate on frequency 1150 kHz with a nominal daytime power of 5,000 watts using a non-directional antenna and with a nominal nighttime power of 500 watts using a directional antenna.⁴ According to the terms of the license, the average hours of sunset and sunrise for June 2001, during which KDEF was required to operate pursuant to its nighttime authority, were 8:15 p.m. until 5:45 a.m. for advanced Mountain Daylight Time ("MDT") time.

¹ 47 C.F.R. §§ 73.1125, 73.1350 and 73.1400.

² 47 C.F.R. § 73.1560.

³ 47 U.S.C. § 503(b).

⁴ Ramh Corporation, Station KDEF License File Number BZ820917AM, granted January 26, 1983.

3. An Agent from the Denver Office monitored the on-air signal of KDEF from approximately 6:15 p.m. MDT on June 7, 2001 to 2:00 p.m., MDT, on June 8, 2001. The Agent took numerous field strength measurements at specified locations and observed no change in power level or mode of operation during this period. The Agent determined that KDEF appeared to operate continuously with approximately 1,000 watts and a non-directional antenna.

4. At approximately 9:15 a.m., MDT, on Friday, June 8, 2001, the Agent attempted to conduct a broadcast station inspection at the KDEF main studio at 2900 Louisiana, NE., Suite 250 in Albuquerque, New Mexico. The Agent found the main studio front door open, but no managerial or staff personnel present. A note posted on the front entry door of KDEF directed deliveries to a mortgage company office in the same building in the event the studio was closed. The Agent contacted the owner of KDEF through the station's consulting engineer. The owner was in Las Cruces, New Mexico at the time, approximately 224 miles from Albuquerque. The owner returned to Albuquerque in the afternoon on June 8, 2001, to enable the station inspection to be completed. The owner stated that the studio was often unattended.

5. In addition to inspecting the main studio on June 8, 2001, the Agent inspected the KDEF transmitter site at 10424 Edith Boulevard, NE., Albuquerque, New Mexico. The inspection revealed KDEF was operating with a 1,000 watt auxiliary transmitter because the 5,000 watt main transmitter was off-the-air for repair. KDEF's contract engineer stated that the station had operated at a power level of approximately 1,000 watts for daytime and nighttime operations for over one year. KDEF's contract engineer was unsure how long KDEF had been operating with the non-directional pattern at nighttime. No records were available at the time of the inspection to show when the directional system was last checked for compliance with KDEF's station authorization. The Sine Systems remote control system was not properly programmed to advise station personnel of any out-of-tolerance condition related to power changes, mode of operation changes or antenna pattern parameters. The station had no established monitoring procedures or schedules to determine compliance with operating power, mode of operation, or antenna pattern parameters.

III. DISCUSSION

6. Section 503(b) of the Act provides that any person who willfully and repeatedly fails to comply substantially with the terms and conditions of any license, or willfully and repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly and the term "repeated" means the commission or omission of such act more than once or for more than one day.⁵

7. Section 73.1125(a) of the Rules states that each AM, FM, or TV broadcast station shall maintain a main studio at one of the following locations: (1) within the station's community of license; (2) at any location within the principal community contour of any AM, FM, or TV Broadcast station

⁵ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Section 312(f)(2), which also applies to Section 503(b), provides: "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

licensed to the station's community of license; or (3) within twenty-five miles from the reference coordinates of the center of its community of license as described in §73.208(a)(1). In addition, the station's main studio must serve the needs and interests of the residents of the station's community of license. To fulfill this function, a station must, among other things, maintain a meaningful managerial and staff presence at its main studio.⁶ The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel. In addition, there must be "management and staff presence" on a full-time basis during normal business hours to be considered "meaningful." Although management personnel need not be "chained to their desks" during normal business hours, they must "report to work at the main studio on a daily basis, spend a substantial amount of time there and ... use the studio as a 'home base.'"⁷ On June 8, 2001, the KDEF main studio was not staffed during normal business hours and the station owner advised the Denver Office Agent the station is often unattended.

8. A broadcast station licensee is responsible for maintaining and operating the station in compliance with the technical rules and in accordance with the terms of the station license. Licensees must maintain and control operating parameters such as output power, level of modulation and directional pattern. In particular, Section 73.1350(c)(1) of the Rules states that "[m]onitoring procedures and schedules must enable the licensee to determine compliance with §73.1560 regarding operating power, and AM mode of operation . . . and §73.69 regarding the parameters of an AM directional system." Section 73.1400 allows stations to employ various methods or levels of transmission system monitoring and supervision that will preclude out-of-tolerance operation to ensure compliance with Section 73.1350, but holds the licensee responsible for "assuring that all times the station operates within tolerance specified by applicable technical rules contained in this part and in accordance with the terms of the station authorization. . . ." Section 73.1560(a) of the Rules states that "[t]he antenna input power of an AM station as determined by the procedures specified in §73.51 must be maintained as near as is practicable to the authorized antenna input power and may not be less than 90% nor more than 105% of the authorized power . . . whenever the transmitter of an AM station cannot be placed into the specified operating mode at the time required, transmissions must be immediately terminated"

9. On June 7 and June 8, 2001, KDEF exceeded authorized nighttime power and failed to change to the proper mode of operation. KDEF's remote control system failed to change to the authorized nighttime power level of 500 watts at the specified monthly sunset time of 8:15 p.m. MDT and on June 8, 2001, failed to change to the authorized daytime power level of 5,000 watts at the specified monthly sunrise time of 5:45 a.m., MDT. KDEF exceeded nighttime power limits by over 200% and operated a non-directional antenna during nighttime when a directional antenna was required. In addition, KDEF's directional antenna parameters were out-of-tolerance. The remote control system failed to properly detect out-of-tolerance conditions on daytime and nighttime power levels, proper modes of operation and directional antenna parameters. KDEF had no established monitoring schedules or procedures to determine compliance with operating power, mode of operation, and the parameters of the AM directional system, was unable to identify when the last complete transmitting system inspection had been conducted and no chief operator review of station logs was observed for the period May 6 through June 8, 2001.

⁶ See *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-18 (1987), *clarified*, 3 FCC Rcd 5024, 5026 (1988).

⁷ *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 n.6 (1991), *clarified*, 7 FCC Rcd 6800, n.4 and 6802 (1992).

10. Based on the evidence before us, we find that Ramh willfully violated Sections 73.1125, 73.1350 and 73.1400 of the Rules by failing to maintain a main studio presence and failing to establish monitoring procedures to ensure compliance with authorized operating power, mode of operation and AM directional system parameters. In addition, we find that Ramh willfully and repeatedly violated Section 73.1560 of the Rules by exceeding nighttime power levels and operating with an improper mode of operation.

11. The base forfeiture amount set by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"),⁸ for failure to maintain directional pattern within prescribed parameters is \$7,000, for violation of the main studio rules is \$7,000, for exceeding power limits is \$4,000, and for violation of transmitter control and metering requirements is \$3,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, a \$21,000 forfeiture is warranted.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Ramh Corporation is hereby NOTIFIED of an APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty-one thousand dollars (\$21,000) for violations of Sections 73.1125, 73.1350, 73.1400, and 73.1560 of the Rules.⁹

13. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Ramh Corporation SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment MUST INCLUDE the FCC Registration number (FRN) referenced above and also must note the NAL/Acct. No. referenced in the caption.

15. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554, and must include the NAL/Acct. No. referenced in the caption.

⁸ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80, 73.1125, 73.1350, 73.1400 and 73.1560.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

18. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail # 7001 0320 0002 9702 4573, Return Receipt Requested and First Class Mail to Ramh Corporation, 2900 Louisiana, NE., Suite 250, Albuquerque, NM 87110.

FEDERAL COMMUNICATIONS COMMISSION

Leo E. Cirbo
District Director, Denver Office

¹⁰ See 47 C.F.R. § 1.1914.